



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

November 12, 1952

Hon. George M. Kelton
County Attorney
Ector County
Odessa, Texas

Opinion No. V-1537

Re: Authority of the county
clerk to refuse to return
instruments filed for re-
cording but not yet actual-
ly recorded.

Dear Sir:

Your request for an opinion of this office
reads in part as follows:

"Your office is requested to render an opinion as to whether or not the County Clerk of Ector County should or should not return instruments without recording same which have been filed or deposited with her for recording and which have been endorsed as filed but which are requested to be returned by the depositor prior to the time said instruments have actually been recorded by the County Clerk. Our County Clerk is concerned with this matter inasmuch as it complicates her book-work when instruments are returned without recording after same have been filed."

Articles 6591, 6594, 6595, and 6596, V.C.S.,
are pertinent to your inquiry and provide as follows:

"County clerks shall be the recorders for their respective counties; they shall provide and keep in their offices well bound books in which they shall record all instruments of writing authorized or required to be recorded in the county clerk's office in the manner hereinafter provided."

"When any instrument of writing authorized by law to be recorded shall be deposited in the county clerk's office for record, if the same is acknowledged or proved in the manner prescribed by law for record, the clerk

shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof."

"Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgements, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record." (Emphasis added throughout.)

"Every such instrument shall be considered as recorded from time it was deposited for record; and the clerk shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto."

The above statutes require the county clerk to record without delay every instrument of writing authorized to be recorded by him which is deposited with him for record. Article 6596 provides that the instrument shall be considered as recorded from the time it is deposited for recording, and when recorded it shall be delivered to the party entitled thereto. Therefore, we agree with you that the county clerk is not authorized to return an instrument in such a case until it has been recorded.

Hon. George M. Kelton, page 3 (V-1537)

SUMMARY

The county clerk is not authorized to return instruments, filed with him recording, until they have been recorded in the county clerk's office.

Yours very truly,

APPROVED:

J. C. Davis, Jr.
County Affairs Division

E. Jacobson
Executive Assistant

Charles D. Mathews
First Assistant

BA:am

PRICE DANIEL
Attorney General

By 
Bruce Allen
Assistant